



TESTIMONY OF:

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BROOKLYN DEFENDER SERVICES

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Committee on Justice System and Committee on Housing and Buildings

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Introduction

My name is Lauren Price, and I am a Senior Staff Attorney of the Civil Justice Practice at Brooklyn Defender Services (BDS). I am also co-chair of the Brooklyn Tenant Lawyers Network, an association of legal services lawyers who represent tenants in Kings County. I would like to take this opportunity to speak to the Council about the dire need for New York City-specific action to abate the coming eviction crisis.

Brooklyn Defender Services provides multi-disciplinary and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for nearly 30,000 clients in Brooklyn every year. BDS' Civil Justice Practice (CJP) aims to reduce the civil collateral consequences for our clients who have had interaction with the criminal,

family or immigration justice systems. We also serve our clients with additional civil legal needs; we know that even a minor housing or benefits issue, if unaddressed, can have insurmountable repercussions, especially for our clients who are already dealing with serious problems in other forums.

Disparate Impact of the Eviction Threat

New York City has already been at the epicenter of the COVID-19 crisis. Without action on federal, state and local levels, the city is guaranteed to face another crisis stemming from COVID-19 which will likely also bring about a new wave of infections. Much like the COVID-19 crisis, the pending wave of evictions will disparately impact Black, Indigenous and people of color New Yorkers. Even before the pandemic, tenants living in majority-Black zip codes were more than three times as likely to be evicted as tenants living in majority-white zip codes.

COVID-19 exacerbated existing inequalities in all facets of life, including housing security. As of early July, Asian, Black and Latinx tenants were three to four times more likely than white tenants to report that they had fallen behind on their rent or deferred payment. Asian, Black and Latinx tenants were also two to three times as likely as white tenants to have little to no confidence that they could pay next month's rent on time. Latinx tenants faced the highest rates of housing instability: more than a third are behind on their rent and nearly half had little to no confidence in their ability to make next month's rent on time. Compared to renters nationwide, Asian and Latinx tenants in the New York City metro area are at much greater risk for losing their housing. [\[1\]](#)

As you know, these populations overlap exactly with the communities and neighborhoods that have been disparately ravaged by COVID-19. Furthermore, it is important that the Council understand that the much-publicized drop in rental prices is not happening in the low-income neighborhoods where our clients live and where COVID-19 hit the hardest, but instead in wealthy Manhattan neighborhoods.

Lack of Affordable Housing Options

In keeping with our focus on holistic, wrap-around services and advocacy for our clients of our office, Brooklyn Defender Services employs an affordable housing search specialist to assist clients with the challenges of relocation. There are strikingly few affordable apartments currently on the market and virtually no movement in that market. Earlier this week, our housing search specialist reported 9 available apartments city-wide within the price range for city vouchers, and only 7 available within the entire lottery housing system. That means for all of the thousands of vouchers holders in New York City, they only had 16 apartment options between them. Within 24 hours, all of those listings were gone. The competition for affordable housing is stiff, even before tenants are forced to relocate because of evictions.

Inadequacies of Housing Court

This eviction crisis is set to unfold imminently. According to the Office of Court Administration, there are 200,000 pending eviction cases in New York City that were filed before March 17. There are 15,000 people with warrants of eviction that pre-date the pandemic, meaning that the Safe Harbor Act is not applicable and does not stay their eviction. The existing New York State moratorium will expire at the end of this month, and the CDC moratorium does not apply to all tenancies, causes of action, or income ranges, and requires that tenants affirmatively identify themselves as being protected in order to avoid eviction.

The New York City housing courts are wholly inadequate to address this crisis. As noted in testimony to the State Senate by advocates and others, including the head of the housing court judges association, the housing courts were not created to address a crisis of this magnitude; the court system is not capable of balancing the equities of landlords and owners who are facing budget shortfalls with the tenants facing homelessness. Furthermore, the physical spaces of the courts are woefully lacking. While there has been an effort to transition to the digital space and virtual appearances, this system disadvantages tenants without lawyers, who are still 70% of litigants in housing court. Additionally, shifting to virtual proceedings presents major concerns with due process and access, particularly for litigants who are disabled, elderly or do not speak

English. It should not be left to the court system to stop, or delay, this crisis. Temporary moratoriums and even zealous housing court representation are only temporary remedies. What is needed are legislative and policy solutions.

Intersecting Issues

Because our clients at BDS are already embroiled in other court systems and proceedings, we have a unique perspective on how this impending crisis will exacerbate the injustices that our clients are already facing. Because statutory provisions about the timing of criminal cases have been suspended during the COVID-19 crisis, our clients whose criminal proceedings would have been dismissed and sealed months ago are still lingering in the system with open cases that impact their ability to find employment, putting them further at risk of eviction and homelessness. For parents that we represent in Family Court proceedings, the near-total shutdown of that court system means that children have remained out of their parents' care for unnecessarily additional months. For parents who rely upon public assistance and voucher payments to afford their apartments, this prolonged separation brought on by COVID-19 has destabilized their HRA household size and threatened the stability of their homes even as they seek to have their children returned to them

For example, Ms. B's two children were removed from her care several months before COVID-19, but the goal in family court planning was that the kids would return to her care. A hearing in family court began pre-pandemic but was adjourned and is now postponed seemingly indefinitely. Without a current family court order demonstrating that the goal for her children is "return to parent", HRA will not consent to add them to her household, which makes the amount of Ms. B's rental assistance and housing voucher inadequate for her household. Because of this delay, entirely attributable to the COVID-19 pandemic, Ms. B is facing increasing arrears and is at risk of eviction.

The risk of eviction and displacement is heightened for all BDS clients because of their justice system involvement. The Council Committee on Immigration will hear today from my colleague on the vulnerabilities of immigrants in New York City. Because USCIS has not processed

applications for work authorizations during COVID-19, immigrant clients who might seek employment are not able to do so, even after the city began reopening, which puts them at heightened risk of eviction based on even greater rent arrears.

The Looming Eviction Crisis

All of these inequities will collide when the eviction moratorium ends in a few short weeks. Because there has been inadequate and confusing information about the CDC moratorium, we expect that both tenants and landlords will be confused about what rights apply in almost every potential housing case. I have already received a motion from a landlord seeking to execute on a warrant of eviction for my client immediately after October 1 in a no cause holdover. We have heard from many other clients, especially immigrants and other vulnerable populations, who plan to move out to avoid eviction proceedings, further indebtedness and conflict with their landlords, because there are no options or protections planned for them. The piecemeal protections will provide little if tenants do not understand what rights they have under the various systems. Notices from landlords that are not standardized and that do not advise tenants of their rights under the various regimes will further the problem. For cases that do make it to housing court, we are concerned that the court will return to the overcrowded, virus-hotspot it was before the pandemic. If cases remain in the virtual realm, litigation over Skype and Zoom will present technical issues for many tenants with less access to technology as well as due process violations for all participants.

Most concerning, the solutions available currently are only proposed for tenants who can prove their rental arrears accrued due to COVID-19 in nonpayment eviction cases. This will only incentivize landlords to instead bring holdover cases to quickly evict tenants who will therefore not be protected under the Safe Harbor Act or the CDC moratorium. Thus, these moratoriums will do nothing to stop the evictions of unregulated tenants in New York City, who make up almost half of all tenants. These moratoriums will also do nothing to stop landlords from inventing cause to evict regulated tenants. For the few remaining who might benefit from the Safe Harbor Act, they will have monetary judgments against them, ending up in perpetual debt and with tarnished credit reports. Further, none of these options provide relief to the few small

landlords remaining in New York City who might be at risk of losing their own homes as well. The economic results will be disastrous and potentially impact generations to come, unless the City Council acts now to provide relief.

Recommendations

Though this hearing is ominously titled, “the potential eviction crisis”, there are steps that the City and State can take to prevent that crisis. Regardless of the patchwork of possible relief from New York State legislation and the CDC moratorium, there are changes that can be made on a municipal level that the council and the agencies it oversees can use to mitigate this approaching disaster.

Universal Eviction Moratorium

First, the City should extend a universal eviction moratorium specifically for city residents. The protections afforded by the Tenant Safe Harbor Act do not apply to all tenants. The overlapping but incomplete protections offered by that measure along with the CDC moratorium have sown confusion among vulnerable New Yorkers. As the Council is well aware, New York City tenants are in a unique position—not only was NYC the hardest hit by the pandemic, but a vast majority of New Yorkers live in rental apartments rather than owning their homes, and the rental vacancy rate remains extremely low, particularly for affordable units.

Almost half of the rental units in NYC are not rent regulated, meaning that landlords can commence evictions proceedings without giving a reason such as rental arrears or lease violations in proceedings known as “holdovers”. Even if courts interpret the CDC moratorium to extend to holdovers, landlords will be incentivized to claim that there are grounds for holdover evictions and tenants will have the burden of proving that those claims are pretextual. This will be particularly onerous for tenants without lawyers, who are still the majority of tenants in housing court. Additionally, the Safe Harbor provisions do not wipe debt away, but instead bifurcate monetary and possessory judgments against tenants. Rather than engaging in a second court proceeding against tenants who owe money and who may be judgment-proof, this rule will

likely compel landlords to bring holdover cases against tenants rather than giving them a chance to make payments. Without a true moratorium, tenants, especially those in unregulated units, will be at risk of eviction without any recourse.

Rent relief

New York City tenants need help with their rent debt, or the moratorium will just continue to push the underlying problem down the road. The City must implement a program to cancel rent, or create a more streamlined process to pay rent arrears for any tenant currently behind on rent, rather than risk the increased cost and public health risk of up to a million tenants either evicted or with money judgments against them that they cannot pay.^[2] The Tenant Safe Harbor Act allows landlords to seek money judgments against tenants, damaging their credit and priming them for homelessness in the future when they can no longer find any landlord to rent to them. Rent relief will benefit not only tenants but also the small landlords who rely upon rental income for their own housing stability.

Voucher eligibility expansion

Brooklyn Defender Services urge the Council to collaborate with HRA and the Mayor's Office to expand the eligibility for the CityFHEPS voucher, particularly as the state rental relief program excluded many of the most vulnerable residents of our city. The income limits for this voucher must be expanded, and tenants who have not yet been brought to court but are behind on rent should be eligible, to incentivize landlords to renew leases and keep families housed. A family should not have to be forced into the trauma of an eviction proceeding in addition to a prior shelter stay before they can qualify for rental assistance, as CityFHEPS currently requires. Of course, the City must also act to prevent source of income discrimination and raise the rental limits on these vouchers so they are actually useful for tenants in this rental market.

Expand emergency rental assistance

In a similar vein, we urge HRA to waive the future affordability requirement for rent arrears grants. While the city's economy has begun to reopen it has not recovered, and arrears are accumulating and leaving tenants at risk who have not returned to the workforce at the same rate as pre-pandemic. Furthermore, given the shutdown of courts and most HRA offices, we urge HRA to consider rent arrears payments at higher than normal amounts and to raise the ceiling on approval for these grants, particularly for applications for vouchers that will stabilize families. Additionally, the Safe Harbor Act awards landlords with nonpossessory money judgments. Historically, HRA has not been willing to make payments on that type of case because the money is not tied to eviction prevention. HRA should expand access to rental arrears grants for such cases as well as cases commenced as holdovers where rental arrear payments might compel landlords to renew leases and keep tenants.

Incentivize housing stability

Currently, financial incentives are in place to encourage landlords to accept families from shelter placements into apartments with the FHEPS voucher. We have heard from many clients that this creates a perverse incentive for landlords of unregulated units to cycle through families from the shelter system, accepting one for a year, evicting them, and starting fresh with a new "bonus" payment for a new family coming out of shelter. Rather than this incentive payment, landlords should be given bonuses for *keeping* families in the affordable units they currently live in, and voucher limits should be raised for current as well as prospective voucher-holders to encourage landlords to continue to house families already living in their apartments. In light of these recommendations, we advise the Council to investigate HRA's plans and any pending changes to the rent arrears and voucher approval systems.

The Council heard on Tuesday about the trauma and needless expense of shelter stays for families. Rather than paying \$3,000 a month to house families in the shelter system, we urge the city to incentivize stability and prevent the shuffle between the tiny stock of affordable apartments and the shelter system. This is even more urgent as displacement and homelessness will only increase exposure and infection due to COVID-19. Quite simply, homeless people

cannot stay home. It is essential that the city acts to keep families in the homes they already have.

Increase shelter services and housing placements

The New York City shelter population is currently at historic lows. This is directly tied to the eviction moratorium. We are concerned that without action to prevent evictions, the shelter population will quickly reach historic highs. Based on our clients' experiences, shelter staff are not at full capacity. Particularly, we have heard about limited access to housing specialists and months-long waits to meet with those staff members. If the City fails to pass any preventative measures, DHS will be forced to prepare for an unprecedented wave of families entering the shelter system. And, given that the pandemic is still ongoing, we advocate that the COVID-19 accommodations for applicants currently in place be continued. Similarly, we encourage the council to inquire about these policies and DHS's preparation for a major influx of shelter applicants.

Conclusion

We thank the New York City Council for the opportunity to appear today and discuss these issues. We urge the City to enact a complete moratorium on evictions in New York City and to implement rent relief measures that will keep all families housed and out of the shelter system. These remedies are within reach of the city and our existing systems and will mitigate the massive impact of COVID-19 on vulnerable New Yorkers across the city.

^[1] Community Service Society "Race and Evictions in New York City" published online at <https://www.cssny.org/news/entry/race-evictions-new-york-city>

^[2] "About 25% of NYC Renters Didn't Pay in May: Survey" <https://therealdeal.com/2020/05/19/about-25-of-nyc-renters-didnt-pay-in-may-survey/>

